

# State of Colorado



Jared Polis  
*Governor*

Neil Peck  
*Board Chair*

Dana Shea-Reid  
*Board Director*

**State Personnel Board**  
1525 Sherman Street, 4<sup>th</sup> Floor  
Denver, Colorado 80203  
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## **AGENDA PUBLIC BOARD MEETING June 18, 2019**

**A public meeting of the Colorado State Personnel Board will be held on Tuesday, June 18, 2019 at 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104, Denver, Colorado 80203. The public meeting will commence at 9:00 a.m.**

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by June 13, 2019.

### **CALL TO ORDER**

- Attendance.
- Disclosure of any potential conflicts of interest with regard to present Board business and notice of recusal, if applicable.

### **I. REPORT OF DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR]**

Agenda item pending until further notice.

### **II. PENDING MATTERS – CASES ON REMAND FROM THE COURT OF APPEALS**

- A. Doris McCauley v. Department of Revenue, Division of Motor Vehicles, Driver's License Section, State Personnel Board case number 2014B061, Court of Appeals Number 2017CA921.

Order Vacated and Case Remanded with Directions issued on March 28, 2019 and Mandate issued on May 21, 2019.

### **III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD**

There are no Initial Decisions on appeal or other final orders of the ALJ's for review.

### **IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING**

- A. Katie Lee v. Department of Human Services, Office of Behavioral Health, Colorado Mental Health Institute at Fort Logan, State Personnel Board case number 2019S046.

Complainant applied unsuccessfully for the position of a Certified Addictions Counselor II at Respondent's Fort Logan location. She petitions the Board for a hearing of her non-selection. Complainant asserts discrimination on the basis of age, gender, and race/color. As relief, Complainant requests employment and a monetary compensation for lost wages, marginalization, and pain and suffering.

Respondent denies Complainant's allegations. Respondent requests that the Board deny Complainant's petition for a hearing.

On May 8, 2019, the ALJ issued a Preliminary Recommendation that the petition for hearing be denied and to refer the matter to the State Personnel Director for further review as may be appropriate.

- B. Brenda K. Cody v. Department of Revenue, Executive Director's Office, State Personnel Board case number 2019G057.

Complainant grieved Respondent's decision to increase her hours from 24 hours per week to 39 hours per week. She petitions the Board for a discretionary hearing following Respondent's Step II grievance response. As relief, Complainant requests to work 24 hours a week until her five year anniversary, a five month buyout, or a layoff.

Respondent denies Complainant's allegations and request the Board deny the Complainant's petition for hearing.

On May 28, 2019, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be denied.

- C. Jonathan McDonald v. Department of Law, State Personnel Board case number 2018G046.

Complainant, formerly a Legal Assistant II in the Department of Law and a certified state employee, filed a petition for hearing with the Board, arguing that criticism of this job performance and a corrective action he received constituted unlawful discrimination based on religion and disability, as well as retaliation and a hostile work environment; all in violation of the Colorado Anti-Discrimination Act (CADA). He also alleges that Respondent's final grievance decision violated his rights under the First Amendment of the U.S. Constitution. As relief, Complainant requests that the Board grant his petition for hearing and any and all relief the Board deems necessary.

Recently, Complainant resigned from his position with the Department of Law, effective May 8, 2019. In response, Respondent filed a Motion to Dismiss Complainant's Petition. In an Order issued on May 17, 2019, the ALJ dismissed Complainant's grievance claim pursuant to Board Rule 8-7(a) which provides that, "If the complaining employee is separated from employment and does not appeal that separation to the Board, any grievance in progress at the department or the Board is considered concluded." The ALJ held that Complainant's CADA claims are not affected by his resignation.

Respondent argues that this matter should not be set for hearing because the Complainant has not met his burden to establish that valid issues exist that merit a hearing. As relief, Respondent requests that the Board deny Complainant's request for a hearing and to dismiss the matter with prejudice.

On June 4, 2019, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be denied.

**V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES**

- A. Lorenzo Wright v. Department of Labor & Employment, Division of Unemployment Insurance, State Personnel Board case number 2019B038.

Complainant, a former certified state employee, appeals his dismissal. Complainant asserts the dismissal was arbitrary, capricious, or contrary to rule or law. Complainant requests that the State Personnel Board reverse the dismissal, award him back pay and lost benefits, and award him attorney fees and costs.

Respondent denies Complainant's allegations and maintains that the dismissal was not arbitrary, capricious, or contrary to rule or law. Respondent requests that the Board affirm the dismissal.

On May 21, 2019, the ALJ issued an Initial Decision affirming Respondent's dismissal. The ALJ found there is no award to Complainant of his attorney fees and costs. Pursuant to § 24-50-125(2), C.R.S., Respondent shall pay Complainant \$1,118.50.

**VI. REVIEW OF THE MINUTES FROM THE MAY 21, 2019 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

**VII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS MAY 21, 2019 PUBLIC MEETING:**

- A. Michelle Muller v. Department of Corrections, State Board of Parole, State Personnel Board case number 2018B012.

No formal action taken.

- B. Braulio A. Rojas v. Colorado State University, State Personnel Board case number 2018G027.

The Board voted to adopt the Preliminary Recommendation of the ALJ and deny the petition for hearing.

- C. Ghada Wahdan v. Department of Public Safety, State Personnel Board case number 2019G029.

The Board voted to adopt the Preliminary Recommendation of the ALJ and deny the petition for hearing.

**VIII. ADMINISTRATIVE MATTERS & COMMENTS**

- A. ADMINISTRATIVE MATTERS

- Status of Cases on Appeal to the Board and Appellate Courts
- Stiles v. Department of Corrections, State Personnel Board No. 2016B034, Colorado Supreme Court No. 2019SC107 – State Personnel Board’s Brief in Opposition to the Petition for Writ of Certiorari filed 5/29/19
- Order Affirmed in Miederhoff v. Department of Transportation, State Personnel Board case number 2018G026; Court of Appeals No. 18CA0868

**B. OTHER BOARD BUSINESS**

- Acknowledgement and sincere thanks to outgoing Board member Vonda Hall and Board Chair, Neil Peck for their service on the State Personnel Board for the past six years.

Director’s Report:

**C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC**

**IX. PROPOSED LEGISLATION AND/OR RULEMAKING**

**X. EXECUTIVE SESSION**

For purposes of considering employment for the position of Board Director pursuant to § 24-6-402(3)(b)(I.)

**ADJOURN:**

**2019 REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.**

<b>January 15, 2019</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>February 19, 2019</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>March 19, 2019</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>April 16, 2019</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>May 21, 2019</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>June 18, 2019</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>July 16, 2019</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>August 20, 2019</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>September 17, 2019</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>October 15, 2019</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>November 19, 2019</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>December 17, 2019</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>